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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,191	03/19/2004	Martin Baumert	ATOCM-0349	6742
23599	7590	05/31/2006		
MILLEN, WHITE, ZELANO & BRANIGAN, P.C. 2200 CLARENDON BLVD. SUITE 1400 ARLINGTON, VA 22201			EXAMINER AUGHENBAUGH, WALTER	
			ART UNIT 1772	PAPER NUMBER

DATE MAILED: 05/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/804,191

Applicant(s)

BAUMERT ET AL.

Examiner

Walter B. Aughenbaugh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 6-9, 19 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 10-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 01/04/06.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group I in the reply filed on March 21, 2006 is acknowledged. The traversal is on the ground(s) that "claims 6-8 do not specify a 'final product' but instead merely describe the shape of the multilayer structure generically recited in claim 1" since the structure of claim 1 has not lost its identity in the articles of claims 6-8. This is not found persuasive because the only structure recited in claim 1 is that the structure has multiple layers, i.e. a laminate is claimed in claim 1, and the laminate of claim 1 loses its identity in the articles of claims 6-8 because claims 6-8 recite that the articles of claims 6-8 "are formed from" the structure of claim 1: the laminate is no longer a laminate, it is one of articles claimed in claims 6-8. That the articles of claims 6-8 are "are formed from" the structure of claim 1 requires that the structure of claim 1 is an intermediate product of what must necessarily be final products claimed in claims 6-8. A final product is necessarily "formed from" an intermediate product. The same analysis applies to the articles of claim 9 due to the "formed from..." recitation that begins in line 1 and spans the rest of the claim. Applicant's argument on page 3 of the Election that claim 9 "is clearly related to the subject matter of Group I" does not address the intermediate/final product basis for the restriction.

The requirement is still deemed proper and is therefore made FINAL.

2. The Restriction Requirement mailed March 6, 2006 was based on claims 1-9 presented in the Preliminary Amendment filed March 19, 2004, and not on claims 1-20 presented in the Preliminary Amendment filed January 4, 2006. An updated restriction requirement is provided below, with the basis for restriction between the method claims of Group III and Groups I and II.

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The basis for restriction made of record in the Restriction Requirement mailed March 6, 2006 applies to Groups I and II since dependent claims 10-18 do not affect that basis for restriction.

The Groups are:

- I. Claims 1-5 and 10-18, drawn to a multilayer structure, classified in class 428, subclass 474.4.
- II. Claims 6-9, drawn to various articles, classified in class 428, subclass 35.7.
- III. Claims 19 and 20, drawn to a method of fabricating various articles, classified in class 264, subclass 500.

3. Inventions III and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different process such as a process that does not involve the layer “(3)”.

4. Inventions III and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different process such as a process that does not involve the layer “(3)”.

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5. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1, 5 and 11-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 1, the structure and/or composition of “layer (2)” intended to be recited by Applicant in lines 6-12 of claim 1 cannot be ascertained since the recitation “based on a graft copolymer having polyamide blocks, formed from a polyolefin backbone and from at least one polyamide graft” in lines 6 and 7 of claim 1 does not positively recite any structure or composition of the “layer (2)” of the claimed final article. A statement that a layer is “based on a [polymer], formed from a [polymer] backbone and from [a] graft” does not positively recite any structure or composition of that layer. The subject matter of lines 8-12 of claim 1 does not

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positively recite any structure and/or composition of "layer (2)" since lines 8-12 refer only to terms in lines 6 and 7 of claim 1.

Claim 5 recites the limitation "the polyolefin backbone containing X" in lines 1-2 of the claim. There is insufficient antecedent basis for this limitation in the claim. Claim 1 does not recite that the polyolefin backbone contains X. The recitation that "residues of [] (X) are attached to the backbone" is not a recitation that the polyolefin backbone contains X.

Claim 11 recites the limitation "said tie layer (3a)" in line 1 of the claim. There is insufficient antecedent basis for this limitation in the claim.

In regard to claim 12, that which is intended to be recited by "a polyamide of a polyolefin layer" cannot be ascertained.

Claim 13 recites the limitation "the flexible polyolefin" in line 1 of the claim. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-5 and 10-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Forloni (U.S. Patent No. 6,299,984).

In regard to claim 1, Forloni teaches a multilayer structure comprising a first layer formed from a polyamide, layer (a) of Forloni, and a second layer comprising a polyolefin, layer (b) of Forloni (col. 5, lines 11-23). Forloni teaches a tie layer (c) that adheres layer (a) to layer

(b) such that layer (a), the tie layer (c) and layer (b) are successive (col. 6, lines 59-63). The recitation “based on a graft copolymer having polyamide blocks, formed from a polyolefin backbone and from at least one polyamide graft” in lines 6 and 7 of claim 1 does not positively recite any structure or composition of the “layer (2)” of the claimed final article and has therefore not been given patentable weight. A statement that a layer is “based on a [polymer], formed from a [polymer] backbone and from [a] graft” does not positively recite any structure or composition of that layer. The subject matter of lines 8-12 of claim 1 has therefore also not been given patentable weight since lines 8-12 refer only to terms in lines 6 and 7 of claim 1, which have not been given patentable weight for the reason provided above.

In regard to claim 2, Forloni teaches that the structure further comprises a polyolefin layer (layer (d) of Forloni, col. 7, lines 1-4) that is superposed on layer (b) (col. 7, lines 1-4 and 27-35).

In regard to claim 3, Forloni teaches that the polyolefin of layer (b) comprises ethylene/alkyl(meth)acrylate copolymer (col. 6, lines 21-41).

In regard to claim 4, the subject matter of claim 4 has not been given patentable weight since claim 4 refers only to the “X” term in lines 9 and 11 of claim 1, and the subject matter of lines 8-12 of claim 1 has not been given patentable weight for the reason provided above in regard to claim 1.

In regard to claim 5, Forloni teaches that the polyolefin of layer (b) comprises ethylene-alkyl acrylate-maleic anhydride copolymers (col. 6, lines 21-41), and ethylene-alkyl (meth)acrylate- maleic anhydride copolymer falls within the scope of Forloni’s teaching of ethylene-alkyl acrylate-maleic anhydride copolymers.

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In regard to claim 10, Forloni teaches a tie layer (c) that adheres layer (a) to layer (b) such that layer (a), the tie layer (c) and layer (b) are successive (col. 6, lines 59-63).

Claim 11 cannot be treated since "said tie layer (3a)" lacks antecedent basis. However, Forloni does teach a second tie layer (layer (c')), col. 7, lines 31-35).

In regard to claim 12, Forloni teaches that the structure further comprises a polyolefin layer (layer (d) of Forloni, col. 7, lines 1-4) that is superposed on layer (b) (col. 7, lines 1-4 and 27-35) and a tie layer, layer (c'), placed between layer (b) and layer (d) (col. 7, lines 31-35).

In regard to claim 13, Forloni explicitly teaches that the polyolefin of layer (d) is preferably a polyolefin copolymer (col. 7, lines 1-4 and 38-50).

In regard to claim 14, the subject matter of claim 14 has not been given patentable weight since claim 14 refers only to the "X" term in lines 9 and 11 of claim 1, and the subject matter of lines 8-12 of claim 1 has not been given patentable weight for the reason provided above in regard to claim 1.

In regard to claim 15, Forloni teaches that layer (a) comprises a polyamide/polyolefin blend having a polyamide matrix (col. 10, lines 35-41, the polyamide constitutes the matrix since it is 60 wt. % of the blend).

In regard to claim 16, Forloni teaches that layer (a) comprises PA-6/12 (col. 5, lines 36-40).

In regard to claim 17, Forloni teaches that layer (c) comprises a functionalized (modified) polyolefin (col. 6, lines 59-67).



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Claim 18 cannot be treated since claim 18 depends on claim 11 which cannot be treated since "said tie layer (3a)" lacks antecedent basis. However, Forloni does teach that layer (c') comprises a functionalized polyolefin (col. 7, lines 29-30 and col. 6, lines 59-67).


***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is 571-272-1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is to 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Walter B. Aughenbaugh  
05/27/06 WBA

  
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1772

5/30/08